

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VICTOR BERRELLEZA-VERDUZCO,

Petitioner,

V.

UNITED STATES OF AMERICA,

## Respondent.

No. C16-1772RSL  
No. CR12-62RSL

**ORDER DENYING MOTION  
UNDER 28 U.S.C. § 2255**

This matter comes before the Court on petitioner’s “Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct A Sentence by a Person in Federal Custody,” Dkt. #1, and the government’s “Answer and Cross-Motion to Dismiss Petition,” Dkt. # 5. Having reviewed the parties’ briefing and the relevant record, the Court finds and rules as follows.

In April 2013, pursuant to an agreement with the government, Case No. CR12-62RSL, Dkt. # 856, petitioner Victor Berrelleza-Verduzco pled guilty to a series of drug trafficking crimes: one count of conspiracy to distribute controlled substances (under 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), & 846); one count of conspiracy to engage in money laundering (under 18 U.S.C. §§ 1956(h), 1956(a)(1)(A)(i), & 1956(a)(1)(B)(i)); one count of conspiracy to interfere with commerce by robbery (under 18 U.S.C. § 1951); and one count of conspiracy to possess firearms in furtherance of a drug trafficking crime (under 18 U.S.C. § 924(o)). Case No. CR12-62RSL, Dkt. # 851.

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1       At petitioner's sentencing in September 2013, petitioner moved to withdraw his guilty  
2 plea and to substitute counsel. Case No. CR12-62RSL, Dkt. # 1099. After a colloquy with the  
3 Court, however, petitioner expressed an interest in proceeding with sentencing. Case No. CR12-  
4 62RSL, Dkt. # 1154 at 3–7. The Court sentenced petitioner to twenty years in custody, followed  
5 by five years of supervised release. Case No. CR12-62RSL, Dkt. # 1100. Petitioner timely  
6 appealed the Court's denial of his motion to withdraw his plea, and on January 23, 2015, the  
7 Ninth Circuit affirmed. Ninth Circuit Court of Appeals Case No. 13-30262, Dkt. # 41. Twenty-  
8 one months after the mandate issued in February 2015, petitioner filed the motion to vacate now  
9 before the Court. Case No. CR12-62RSL, Dkt. # 1368; Dkt. # 1. The government opposes  
10 petitioner's motion to vacate his sentence and asks the Court to dismiss it. Dkt. # 5.

11       Under 28 U.S.C. § 2255, a prisoner in federal custody may move the sentencing court to  
12 vacate, set aside, or correct his sentence where “the sentence was imposed in violation of the  
13 Constitution or laws of the United States, or [where] the court was without jurisdiction to impose  
14 such sentence, or [where] the sentence was in excess of the maximum authorized by law, or is  
15 otherwise subject to collateral attack . . . .”

16       Here, petitioner asks the Court to vacate his sentence pursuant to 28 U.S.C. § 2255 on the  
17 grounds that his sentence is unconstitutional under Johnson v. United States, 135 S. Ct. 2551  
18 (2015). In that case, decided June 26, 2015, the Supreme Court invalidated as unconstitutionally  
19 vague the Armed Career Criminal Act's residual clause, which defines “violent felony” as “any  
20 crime punishable by imprisonment for a term exceeding one year . . . that . . . involves conduct  
21 that presents a serious potential risk of physical injury to another.” Johnson, 135 S. Ct. at 2557.  
22 On April 18, 2016, the Supreme Court declared this holding retroactive in cases on collateral  
23 review. Welch v. United States, 136 S. Ct. 1257, 1268 (2016).

24       Because petitioner's conviction became final more than one year before petitioner filed  
25 this motion, see 28 U.S.C. § 2255(f)(1), petitioner's motion is untimely. And even if petitioner

1 could invoke Johnson to invalidate his sentence – which, on the merits, he cannot, as he was not  
2 convicted under the ACCA’s residual clause or under any similarly-worded statute; nor was he  
3 sentenced in reliance on Guidelines language similar to the residual clause – petitioner filed this  
4 motion over one year after Johnson was decided. Accordingly, petitioner’s motion is untimely  
5 even under 28 U.S.C. § 2255(f)(3).

6  
7 For all of the foregoing reasons, petitioner’s motion under 28 U.S.C. § 2255 (Dkt. # 1) is  
8 DENIED. The government’s cross-motion to dismiss (Dkt. # 5) is GRANTED. Because  
9 petitioner has failed to make a substantial showing of the denial of a constitutional right, the  
10 Court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2). The Clerk of  
11 Court is directed to close the case.

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14 Dated this 30th day of May, 2017.

15 Robert S. Lasnik  
16 Robert S. Lasnik  
17 United States District Judge  
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